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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte RALPH S. NORMAN

Appeal 2009-007563
Application 10/801,626
Technology Center 3600

Before: JENNIFER D. BAHR, FRED A. SILVERBERG, and MICHAEL
W. O'NEILL, *Administrative Patent Judges.*

BAHR, *Administrative Patent Judge.*

DECISION ON APPEAL¹

¹ The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, or for filing a request for rehearing, as recited in 37 C.F.R. § 41.52, begins to run from the “MAIL DATE” (paper delivery mode) or the “NOTIFICATION DATE” (electronic delivery mode) shown on the PTOL-90A cover letter attached to this decision.

STATEMENT OF THE CASE

Ralph S. Norman (Appellant) appeals under 35 U.S.C. § 134 (2002) from the Examiner's decision rejecting claims 5 and 6 under 35 U.S.C. § 102(b) as being anticipated by Morgan (US 6,802,519 B2, issued Oct. 12, 2004); claims 7 and 8 under 35 U.S.C. § 103(a) as being unpatentable over Morgan and Hopey (US 6,145,637, issued Nov. 14, 2000); and claims 5-8 under 35 U.S.C. § 103(a) as being unpatentable over Gustafsson (US 4,773,514, issued Sep. 27, 1988) and Morgan. We have jurisdiction over this appeal under 35 U.S.C. § 6 (2002).

The Invention

Appellant's claimed invention is directed to "a device that uses a fluid to dampen a force that tends to move the plane of rotation of a steerable wheel or wheels of a vehicle having a shaft used to steer such wheel or wheels away from being generally parallel to the frame of such vehicle." Spec., para. 1.

Claim 5, reproduced below, is illustrative of the claimed subject matter.

5. An improved fluidic dampening device of the type having a housing with an uppermost portion and containing a wiper and a channel for transferring fluid from a first side of the wiper to a second side of the wiper, wherein the improvement comprises:

a first clamp having an upper segment and a lower segment with the upper segment releasably connected to the lower segment so as to create an aperture with a lowermost portion, said first clamp being attached to the housing near a left side of the housing; and

a second clamp having an upper segment and a lower segment with the upper segment releasably connected to the lower segment so as to create an aperture with a lowermost portion, said second clamp being attached to the housing near a

right side of the housing, wherein the attachment of said first clamp to the housing and the attachment of said second clamp to the housing is such that the uppermost portion of the housing is lower than the lowermost portion of the aperture in the first clamp and also lower than the lowermost portion of the aperture in the second clamp.

SUMMARY OF DECISION

We AFFIRM.

OPINION

Anticipation Rejection

In reading Appellant's claim 5 on the structure of Morgan, the Examiner found that the left side of clamp plate 17 corresponds to the "first clamp," the right side of clamp plate 17 corresponds to the "second clamp," the hydraulic chamber 19 corresponds to the "housing," paddle or vane 21 corresponds to the "wiper," and grooves 39 correspond to the "channel." Ans. 4. In reading Appellant's claim 6 on the structure of Morgan, the Examiner found that the fork clamp 13 corresponds to the "triple clamp." *Id.*

The only aspect of the Examiner's findings that is disputed by Appellant concerns the claim limitation that the first and second clamps be attached to the housing near a left side and a right side, respectively, in combination with a triple clamp having a top being attached to the lower segments of the first and second clamps. App. Br. 11; Reply Br. 4. In essence, Appellant, while conceding that claim 5 allows for the first clamp and second clamp to be connected via some additional structure to the housing, appears to be asserting that the Examiner cannot rely on the fork

clamp 13 to satisfy this additional structure (the “triple clamp” of claim 6), because the Examiner has already relied on the fork clamp 13 for the connection of the first and second clamps to the housing in claim 5. App. Br. 11.

Thus, the issue raised in the appeal of this rejection is whether the fork clamp 13 depicted in Figure 2 of Morgan can be relied upon to satisfy both the housing of claim 5 and the triple clamp of claim 6.

Appellant’s assertion that the doctrine of claim differentiation somehow precludes the Examiner’s finding that Morgan anticipates the subject matter of claim 5 (App. Br. 11; Reply Br. 4) seemingly misapplies the doctrine of claim differentiation. “In the most specific sense, ‘claim differentiation’ refers to the presumption that an independent claim should not be construed as requiring a limitation added by a dependent claim.” *Curtiss-Wright Flow Control Corp. v. Velan, Inc.*, 438 F.3d 1374, 1380 (Fed. Cir. 2006). Thus, applying the doctrine of claim differentiation to the present case, claim 5 should not be construed as requiring a triple clamp attached to the lower segments of the first and second clamps. That does not mean that claim 5 should be construed as excluding a triple clamp attached at its top to the lower segments of the first and second clamps.

We find that Morgan’s fork clamp 13 comprises a housing defining hydraulic chamber 19 and a triple clamp integrally formed with said housing. We also find that Morgan’s clamp plate 17 and riser posts 14 are attached to the top of the fork clamp 13 near the right and left sides, respectively, of the fork clamp. Accordingly, the Examiner has not erred in finding that the connection between Morgan’s clamps and the fork clamp 13 satisfies the attachment of the clamps to the housing required in claim 5.

Moreover, the Examiner commits no error in finding that the top surface portions of Morgan's fork clamp 13 attached to the riser posts 14 correspond to the top of the triple clamp portion of the fork clamp 13, such that the clamp plate 17 and riser posts 14 are attached to the housing portion of the fork clamp 13 via attachment to the top of the triple clamp portion of the fork clamp 13, so as to satisfy the limitations of claim 6.

We sustain the rejection of claims 5 and 6 as being anticipated by Morgan.

Obviousness Rejection based on Morgan and Hopey

In contesting this rejection of claims 7 and 8, "Appellant relies principally upon" the argument asserted against the rejection of claims 5 and 6 as being anticipated by Morgan. App. Br. 12. For the reasons discussed above with respect to the anticipation rejection, Appellant's argument also fails to convince us that the rejection of claims 7 and 8 as being unpatentable over Morgan and Hopey should be reversed.

Appellant asserts that "he cannot find a two-part clamp having one end of each part rotatably connected to each other in Hopey" (App. Br. 11), but does not explicitly contest the Examiner's findings that Hopey shows "a clamp with a [rotatable] connection at one end" and that "[s]uch clamps are well known as . . . alternative designs" (see Ans. 4-5). We, like the Examiner (Ans. 4-5), find that Figure 4 of Hopey depicts a clamp 359 comprising a first segment releasably connected to the other segment (on the right side as depicted in Hopey's Figure 4) via a threaded fastener and rotatably connected to the other segment (on the left side as depicted in Hopey's Figure 4) (note the two segments will rotate toward one another to clamp down against the steer-tube when the fastener is threaded in the

tightening direction and will rotate away from one another when the fastener is threaded in the opposite direction).

We sustain the rejection of claims 7 and 8 as being unpatentable over Morgan and Hopey.

Obviousness Rejection based on Gustafsson and Morgan

The Examiner's rejection of claims 5-8 based on this combination is grounded on the conclusion that the combined teachings of these references would have rendered it obvious to a person of ordinary skill in the art "to mount the clamps [clamping fasteners 2a, 2b of Gustafsson] on top of the housing [casing 6 of Gustafsson] as taught by Morgan . . . as such is merely a design choice." Ans. 5. We do not agree with the Examiner. As pointed out by Appellant (App. Br. 12), Morgan describes an arrangement wherein the internal workings of the damper (hydraulic chamber 19, paddle or vane 21, etc.) are placed within the triple clamp (fork clamp 13). *See* Morgan, Fig. 2. Gustafsson, on the other hand, places the internal workings of the damper in a separate casing 6, which is distinct from the triple clamp (front fork top member 3) and fastened to the top of the triple clamp. Thus, we agree with Appellant that the combined teachings of these references would not have prompted a person of ordinary skill in the art to mount the clamping fasteners 2a, 2b to the top the casing 6 of Gustafsson. *See* App. Br. 14-15 (Appellant referring to the dampening device in its own distinct casing as a "traditional dampener"). Rather, the combined teachings of these references would have prompted a person of ordinary skill in the art to either provide the dampening device within the triple clamp, with the clamps being attached to the triple clamp, as taught by Morgan, or provide a separate

casing for the dampening device, fastened to the top of the triple clamp, with the clamps being attached to the triple clamp, as taught by Gustafsson.

We do not sustain the rejection of claims 5-8 as being unpatentable over Gustafsson and Morgan.

DECISION

The Examiner's decision is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a). *See* 37 C.F.R. § 1.136(a)(1)(iv) (2007).

AFFIRMED

hh

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